

**MAR 08 2006**

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OCTAVIO ERNESTO ESPINO-ACATA,

Defendant - Appellant.

No. 05-30316

D.C. No. CR-05-00015-SEH

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Sam E. Haddon, District Judge, Presiding

Submitted March 6, 2006\*\*  
Seattle, Washington

Before: O'SCANNLAIN, SILVERMAN, and GOULD, Circuit Judges.

Octavio Ernesto Espino-Acata appeals his 57-month sentence imposed after his guilty-plea conviction on one count of Illegal Reentry of a Deported Alien in

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

We review Espino-Acata's 57-month sentence for reasonableness. *United States v. Booker*, 543 U.S. 220, 261 (2005). At the sentencing hearing, the district court weighed the Sentencing Guidelines range of 46 to 57 months and considered other 18 U.S.C. § 3553(a) sentencing factors, noting that Espino-Acata's prior drug conviction, return to the United States following deportation, and drug problem warrant a sentence at the high end of the Guidelines range. The court did not err in concluding that Espino-Acata has a drug problem; he told the court that this was the case and requested enrollment in the Bureau of Prisons' drug treatment program. We conclude that the sentence is reasonable. *See Booker*, 543 U.S. at 261; *United States v. Plouffe*, 436 F.3d 1062, 1062 (9th Cir. 2006).

Espino-Acata's due process claim also fails, as he has not shown that the district court's assumption that he used drugs was false or unreliable. *See United States v. Ching*, 682 F.2d 799, 801 (9th Cir. 1982).

**AFFIRMED.**